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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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SCOTT and BEVERLY CANDRIAN,)
husband and wife, and SCOTT and)
BEVERLY CANDRIAN on behalf of)
10 RS INDUSTRIES, INC., an Iowa)
Corporation,)

No. CIV 13-088-TUC-CKJ

11

Plaintiffs,

ORDER

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vs.

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RS INDUSTRIES, INC., an Iowa)
14 Corporation, PERRY HINTZE,)
STANLEY HINTZE, TIM HINTZE,)
15 JEFF HINTZE, TODD HINTZE, GREG)
HESTER, and KEVIN CONKLIN,)

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Defendants.

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Pending before the Court is Plaintiffs' Verified Motion for Temporary Restraining
19 Order and Preliminary Injunction (Doc. 84) and Defendants' Motion to Dismiss for Lack of
20 Jurisdiction the Application for TRO and Preliminary Injunction (Doc. 85). The parties
21 presented limited argument on October 1, 2013, and the Court took the matter under
22 advisement. In light of the detailed briefing and the Court's history with this matter, the
23 Court finds it would not be assisted by any further argument.

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Procedural Background

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On May 21, 2013, this Court denied the prior application for a preliminary injunction
27 sought by Plaintiffs Scott and Beverly Candrian (the "Candrians"). In denying the
28 application, the Court determined that there was some probability that the Candrians would

1 be successful in their claims; however, the Court did not find that a significant showing has
2 been made. In considering whether irreparable harm had been shown, the Court stated:

3 The concerns the Court expressed in issuing the Temporary Restraining Order have
4 been alleviated by the testimony presented at the Preliminary Injunction hearing. The
5 testimony establishes that the companies will be able to continue to be bondable and
6 maintain a line of credit. Included within this consideration is that Candrian does not
7 object to a forensic audit of Sun. Further, Hintze has agreed that Candrian's
8 employment will not be terminated prior to the expiration of the employment contract
9 and his testimony indicates that discussions for future consulting are ongoing.
10 Additionally, the parties agree that Kinseth will be Candrian's successor. The
11 testimony establishes the strong financial health of RS and Sun and that all parties are
12 interested in the continuing success of the companies.

13 The dispute between the parties is a contract dispute which may be remedied by
14 money damages. Economic damages are not traditionally considered irreparable
15 because the injury can later be remedied by a damage award. *Cal. Pharmacists Ass'n*
16 *v. Maxwell Jolly*, 563 F.3d 847, 852 (9th Cir.2009), *modified on other grounds*,
17 *quoting Sampson v. Murray*, 415 U.S. 61, 90, 94 S.Ct. 937, 39 L.Ed.2d 166 (1974).
18 Although there may be some likelihood of success by Candrian in this lawsuit, the
19 Court finds that no *irreparable* harm will result if a Preliminary Injunction is not
20 issued. Rather, any injuries related to the allegations in the Amended Complaint can
21 be remedied by a damages award.

22 May 21, 2013, Order, Doc. 72, pp. 7-8.¹

23 Defendants have filed a Motion to Dismiss (Doc. 42) and the Candrians have filed
24 a Motion for Leave to File a Third Amended Complaint (Doc. 78) and a Motion for Limited
25 Expedited Discovery (Doc. 79). These motions are contested by the opposing parties and are
26 pending a ruling by the Court.

27 On September 28, 2013, the Candrians filed a new Motion for Temporary Restraining
28 Order and Preliminary Injunction (Doc. 84); Defendants have filed a Motion to Dismiss for
Lack of Jurisdiction the Application for TRO and Preliminary Injunction (Doc. 85).

Standard for Injunctive Relief

To obtain injunctive relief, a moving party must show either "(a) probable success on
the merits combined with the possibility of irreparable injury or (b) that [it] has raised serious
questions going to the merits, and that the balance of hardships tips sharply in [its] favor."

¹The Court having more extensively set forth the applicable law and facts of this case
in the prior injunction proceeding, the Court will not repeat those standards and facts.

1 *Bernhardt v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir.2003). The Ninth Circuit has
2 explained that "these two alternatives represent 'extremes of a single continuum,' rather than
3 two separate tests. Thus, the greater the relative hardship to the moving party, the less
4 probability of success must be shown." *Immigrant Assistant Project of Los Angeles County*
5 *Fed'n of Labor (AFLCIO) v. INS*, 306 F.3d 842, 873 (9th Cir.2002), citation omitted.

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7 *Second Application for Temporary Restraining Order and Preliminary Injunction*

8 In considering the Candrians' request for injunctive relief, the Court considers the
9 evidence previously presented to the Court and the new allegations submitted by the
10 Candrians. As the parties dispute the facts and events of what has transpired since the
11 Court's last consideration of these issues, for the purposes of this Order, the Court will accept
12 the Candrians' allegations. The Candrians assert Defendants have "seized control of Sun's
13 IT system and access to corporate records, sued Sun's IT manager, blocked by legal action
14 Candrian's efforts to audit RS's books and records, and hired a new accountant and paid it
15 over \$1 million to conduct a forensic audit of Candrian and Sun in support of their litigation
16 efforts." Application, Doc. 84, p. 4. The Candrians further assert Respondent Hintze has not
17 cooperated in efforts to maintain a workable *status quo* and has underhandedly and recklessly
18 attempt[ed] to wrest control of Sun from Candrian regardless of the inevitable collateral
19 damage to Sun and Sun's employees. *Id.* at 5. The Candrians also allege that Defendant
20 Perry Hintze:

21 acting in his self-proclaimed role of RS President, issued an unprecedented and
22 illegal "consent resolution" summarily removing Beverly and Scott Candrian as Sun's
23 directors and replacing them with Todd Hintze, Stanley Hintze, and Kevin Conklin.
24 [Footnote omitted.] In a second "consent resolution", these new alleged "directors"
25 of Sun then purported to remove all of Sun's existing officers, including Candrian and
26 Kinseth, and purported to install Conklin as Sun's new President. The new
27 "directors," acting pursuant to the apparent authority fo the foregoing sham
28 "resolutions", also seized control of Sun's bank accounts by removing Candrian and
all other authorized signers on those accounts.

26 *Id.*, at 6. The Candrians further assert Conklin subsequently arrived at Sun's headquarters
27 to take over as Sun's new president and Defendants' attorneys initiated an action in state
28 court.

1 The Candrians argue that these and other actions clearly show that Defendants are
2 more interested in seizing control of Sun than in ensuring its continued success. Specifically,
3 the Candrians point to Conklin’s lack of familiarity and developed relationships with
4 Tucson’s business community. The Candrians argue Defendants have not shown they have
5 the ability to satisfy a substantial damages award and, even if they could, “[n]o amount of
6 money could compensate Candrian for being forced to surrender the company he founded
7 to the Hintzes months, if not years, before receiving a dime of the promised compensation.”
8 *Id.* at 11.

9 Generally, economic damages are not traditionally considered irreparable because the
10 injury can later be remedied by a damage award. *Cal. Pharmacists Ass'n v. Maxwell Jolly*,
11 563 F.3d 847, 852 (9th Cir.2009), *modified on other grounds, quoting Sampson v. Murray*,
12 415 U.S. 61, 90, 94 S.Ct. 937, 39 L.Ed.2d 166 (1974). Although the Candrians have argued
13 that the destruction of Sun warrants equitable relief, the facts as alleged by the Candrians do
14 not show that Defendants’ conduct is likely to destroy Sun. Rather, there is nothing to
15 establish that either the Candrians or Defendants have anything other than an interest in Sun
16 maintaining its success. Rather than the evidence showing that Defendants’ conduct may
17 negatively affect Sun’s success, the evidence and facts alleged show both the Candrians and
18 Defendants seek to pursue action each believe is in Sun’s best interests – the parties simply
19 disagree about the best way to ensure that success. The evidence shows that it is the
20 continued inability and/or unwillingness of the parties to work together that may negatively
21 affect Sun’s future success.

22 The Candrians having failed to clearly show that irreparable harm warranting
23 equitable relief, rather than economic damages, is possible, the Court finds it appropriate to
24 deny the requested injunctive relief. To the extent Defendants seek dismissal of the
25 requested injunctive relief because economic loss is not a basis for injunctive relief, the Court
26 will grant the Motion to Dismiss the Application for TRO and Preliminary Injunction.

27 Accordingly, IT IS ORDERED:

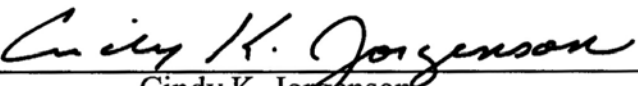
- 28 1. Plaintiffs’ Verified Motion for Temporary Restraining Order and Preliminary

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Injunction (Doc. 84) is DENIED.

2. Defendants' Motion to Dismiss for Lack of Jurisdiction the Application for TRO and Preliminary Injunction (Doc. 85) is GRANTED.

DATED this 3rd day of October, 2013.



Cindy K. Jorgenson
United States District Judge